However, in view of the above facts, and in the light of the extended provisions of section 79 of the Road Traffic Ordinance, I indicated to the learned Deputy Public Prosecutor that if I was not satisfied that an offence was committed, I would dismiss his appeal and in revision, set aside the conviction, sentence and disqualification.

On 15 January 1968, it is now provided in section 79 of the Road Traffic Ordinance of 1958 that

"Where a certificate of insurance has been delivered under sub-section (4) of section 75 of this Ordinance to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any of the following matters —

....

(j) the driver of the motor-vehicle at the time of the accident not holding a licence to drive or not holding a licence to drive the particular vehicle, or

(k) the motor vehicle being used for a purpose other than the purpose stated in the policy, shall, as respects such liabilities as are required to be covered by a policy under paragraph (b) of sub-section (1) of section 75 of this Ordinance, be of no effect."

There is a proviso to this section and its words seem to me to clarify the position further:

"Provided that nothing in this section shall require an insurer to pay any sum in respect of the liability of any person otherwise than in or towards the *discharge of that liability*...."

The learned Deputy Public Prosecutor however sought to maintain the conviction. He first relied on the case of *Public Prosecutor* v. *Nasir*,[1] where it was held that the failure to display "L" plates on a motor-cycle ridden by a provisional rider as required by rule 16(c) of the Motor Vehicles (Driving Licence) Rules 1959 was a breach of one of the conditions attached to his learner's licence and he was guilty also of driving without a valid third party insurance, despite the fact that he had a licence for the material time.

Nasir's case did not however refer to these amendments.

The learned Deputy Public Prosecutor then relied on the judgment in *Velusamy & Anor.* v. *Public Prosecutor*[2] in which it was held that the provision in section 79(k) which immediately follows section 79(j), *supra* and which was similarly a statutory enlargement did not operate to save, to use a broad expression, a pirate-taxi driver with only a third party insurance policy for private user, from a conviction under section 74(1) for driving without a valid third party insurance. It was therein held that

"All section 79 says is that this restriction in the policy shall have no effect only as regards the first appellant's (i.e. the driver's) civil liability towards third parties. In other words, notwithstanding this restriction, the insurer remains ultimately liable to compensate third parties injured by the assured, because (as made clear by the proviso) if the insurance company pays any sum to third parties by virtue of this section, then it may recover that sum from the assured. Section 79 is concerned only with civil liability; it does not affect the first appellant's criminal liability."

For a time I had thought that the test was the effective one of whether third parties would have their claims met, but recalling that it is basically a matter of interpretation, I accept with respect the judgment of Suffian F.J. (as he then was) in *Velusamy's* case. Persons injured by the driving of a vehicle are now, in terms of the proviso, "covered by the policy by virtue of this section," and not by the policy. The driver has not therefore a valid policy as required by section 74.

The appeal succeeds but having caused the poor respondent such considerable inconvenience, I do not think that I could impose on him a heavier fine than $50.

Appeal allowed.

PUBLIC PROSECUTOR v. MAHMUD

[A.Cr.J. (Ong Hock Sim F.J.) December 14, 1973]
[Penang — Criminal Appeal No. 74 of 1973]

Criminal Law and Procedure — Summary trial — Accused pleading guilty — Whether Magistrate can acquit accused on view that on the facts no offence is disclosed — Criminal Procedure Code, (S.S. Cap. 21), s. 183(g).

In this case the respondent had pleaded guity to a charge of driving a motor-car without due care and attention. After the prosecuting officer had given the brief facts of the case, the learned magistrate formed the view that "on the facts no offence is disclosed" and purporting to act under section 183(g) of the Criminal Procedure Code he acquitted the respondent. The Public Prosecutor appealed.

Held, allowing the appeal: (1) the facts, if admitted showed, that the respondent had failed to exercise the due care and attention which would have averted the incident of the car knocking a telephone post and therefore the learned Magistrate was wrong in acquitting the respondent;

(2) it is not open to a magistrate to acquit an accused person without hearing evidence. The order of acquittal should be set aside and the respondent be re-summoned to answer to the charge as framed.

CRIMINAL APPEAL.

T. Selvanthiranathan (Deputy Public Prosecutor) for the appellant.

Respondent in person.

Ong Hock Sim F.J.: The respondent was charged under section 36(1) of the Road Traffic Ordinance (No. 49 of 1958) for driving motor-car No. BN 4378 without due care and attention.

The respondent pleaded guilty and the prosecuting officer proceeded to give the brief facts which I now set out in full:

"On 9.6.73 at about 3.45 p.m. Defendant was driving motor-car BN 4378 along Jalan Ara Kuda, 16½ milestone and proceeding towards Kulim. While Defendant was negotiating a sharp bend, the said car went to the left of the road and knocked into a telephone post. Damage to the post was estimated at 99.71 cts."

The learned magistrate thereupon formed the view "on the facts no offence is disclosed" and purporting to act under section 183(g) of the Criminal Procedure Code acquitted the respondent. This section reads:

"183(g) Nothing in paragraph (f) shall be deemed to prevent the court from acquitting the accused at any previous stage of the case if, for reasons to be recorded by the court, it considers the charge to be groundless;"

As is commented by *Mallal* at page 270 of his Criminal Procedure (4th Edn.) on Singapore section 172(g) which is in *pari materia* with our section 183(g), "a magistrate can avail himself of his powers under this paragraph... where all the facts which the pro-

secution have set out to prove would not constitute a criminal offence even if they were accepted."

In the instant case, without asking the respondent whether he admitted the "brief facts," the magistrate in his short grounds of judgment said: "From the facts given, I cannot agree that an offence under section 36(1) of the Road Traffic Ordinance is disclosed. There is nothing to say how the defendant drove his car then, let alone that he was driving without due care and attention." I regret I am wholly at a loss to understand how it can be regarded as blameless driving when a car knocked into a telephone post, unless it be because the telephone post is an inanimate object and had no right to be placed there. The magistrate might have been influenced by the further words "or without reasonable consideration *for other persons using the road*" and was of the view that the telephone post could not be a person using the road. He would have taken a different view if he had been standing where the telephone post was and the respondent had driven his car and knocked into him. I am of the view that *this fact* of knocking into the telephone post, *unexplained* by mechanical defect or other reasonable cause, is *prima facie* evidence that the respondent had failed to exercise the due care and attention, which would have averted this incident.

I may add that without hearing evidence it is not open to the magistrate to acquit. There has been *no trial* and I therefore set aside the order of acquittal and direct that respondent be re-summoned to answer to the charge as framed.

Order accordingly.